

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 2009-01

of

WHISTLING RIDGE ENERGY PROJECT  
LLC

for

WHISTLING RIDGE ENERGY PROJECT

PETITION OF SAVE OUR SCENIC  
AREA FOR RECONSIDERATION OF  
“RECOMMENDATION PACKAGE”  
For The WHISTLING RIDGE  
ENERGY PROJECT

(Oral Argument Requested)

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#### Abbreviations Employed

In the course of this motion the following terms will be used:

<u>Council:</u>	Energy Facilities Site Evaluation Council.
<u>EFSLA:</u>	Energy Facilities Site Location Act, ch. 80.20 RCW
<u>FCRTS:</u>	Federal Columbia River Transmission System.

1 GMA: Growth Management Act, ch. 36.70A RCW

2 I-937: Initiative Measure 937 codified as ch. 19.285 RCW

3 Recommendation Package: Orders 868, Order 869 and Draft Site Certification  
4 Agreement

5 Whistling Ridge: The project requested for approval by EFSEC.

6 WRE: Whistling Ridge Energy Project, LLC, wholly owned by S.D.S. Co, LLC, is the  
7 project applicant.

8  
9 **1. BACKGROUND AND INTRODUCTION.**

10 Intervenor Save Our Scenic Area (SOSA) hereby petitions the Council for  
11 reconsideration of its "Recommendation Package" consisting of Council Orders 868, 869  
12 and the draft Site Certification Agreement ("Draft SCA") approving the Whistling Ridge  
13 project.

14 In making this motion, SOSA does commend the Council for taking the useful first  
15 step of eliminating the A1-7 and C Corridors from the proposal. However, overall the  
16 balance between this small amount of power and the impact on the "international treasure"  
17 of the Columbia Gorge cannot be tipped in favor of this project, when Washington has an  
18 electric power surplus for the foreseeable future and an absolute glut of wind energy.  
19 Indeed, additional wind energy creates far more problems in integration into the electric  
20 grid than it solves and indeed it is likely that this supposed "clean" resource will require  
21 carbon-based fuels for load balancing. Further, the likely outcome of this approval will be  
22 to ship the Whistling Ridge power to California, where higher demand and higher prices  
23 allow higher profits, at the expense of a unique Washington scenic resource. The Council  
24 should exercise the duty to recognize Washington state interests and reject the proposal in  
25 its entirety.

26 In addition, the Council erred in concluding that the proposal is consistent with  
27 Skamania County's Comprehensive Plan and Zoning Code. Neither of these planning  
28 documents recognize, much less permit industrial scale wind turbines. In fact, Skamania

1 County's recent (2007) Comprehensive Plan places the project land in a "Conservancy"  
2 zone, specifically to protect commercial forest lands as mandated in the Growth  
3 Management Act. The Council's decision violates this state priority by allowing industrial  
4 scale wind turbines in these protected forest lands.

5 In summary, the Whistling Ridge project is contrary to the applicable  
6 comprehensive plan and zoning code, is not needed to meet consumer loads and  
7 permanently damages the unique resources of the Columbia Gorge. The Council should  
8 reconsider its recommendation package and recommend that the proposal be denied.

9 **2. THE ADVERSE IMPACTS OF THE WHISTLING RIDGE PROJECT ON**  
10 **UNIQUE RESOURCES REQUIRES DENIAL.**

11 While there were multiple issues that were highly contested in these proceedings,  
12 the one matter on which there was substantial consensus is the value of the Columbia  
13 Gorge. As Chair Luce pointed out in his opinion, the Gorge is rated 6<sup>th</sup> internationally and  
14 2<sup>nd</sup> in North America as a destination by the National Geographic Center for Sustainable  
15 Destinations. Order 868 at 49 (Footnote iii). As the website cited by Mr. Luce indicates,  
16 "sustainability" is a key element of this value.

17 Washington Governor Christine Gregoire agrees with these characterizations. In  
18 her letter that appeared in the 25<sup>th</sup> Anniversary Commemorative Edition of Peter  
19 Marbach's book "Columbia River Gorge National Scenic Area", she states that: "The  
20 Columbia River Gorge is like no place on earth." Her letter, joined in by Oregon  
21 Governor John Kitzhaber, is Attachment A to this brief. She characterizes the Gorge as a  
22 "wild and beautiful place" and an "international treasure." In urging that the citizens of  
23 Washington "build upon the efforts of the first 25 years" of the Scenic Area's existence,  
24 "to inspire pride, passion and creative thinking for the future stewardship of this special  
25 place." There is no question that the proceedings before Council have demonstrated the  
26 "pride" and "passion" of hundreds of citizens and residents intent on preserving and  
27  
28

1 protecting the natural features of the Gorge from WRE's proposed wind turbines.<sup>1</sup>

2 By no means does SOSA suggest that the initial efforts of the Council culminating  
3 in the elimination of the A1-7 and C Corridors proposed by WRE should be overlooked or  
4 diminished. Removing the A1-7 and C Corridors has made a measurable difference in the  
5 visual impact of the WRE proposal, as well as addressing other important impacts,  
6 including noise, geological risks and wildlife impacts.

7 However, the decision not to deny the entire project takes a far too limited view of  
8 the responsibilities of this Council under the EFSEC act. As Mr. Luce's opinion points  
9 out, this Council has received and processed very few applications for renewable energy  
10 projects. See Order 868 at Footnote xvii. These totalled only 563 MW, while there are  
11 8,531 MW of wind energy either on line, under construction or in the queue. Thus only  
12 about 6.5% of the Washington's wind projects have come before EFSEC; the rest have  
13 been reviewed, and approved, by local government. These figures debunk the myth that  
14 wind turbine projects are difficult to site, with 90% of wind projects permitted at the local  
15 level. Indeed, the Lower Snake River project sponsored by Puget Sound Energy in  
16 Garfield and Columbia counties, a project several times larger than Whistling Ridge, was  
17 approved without "major issues." See testimony of Anthony Usibelli of the State Energy  
18 Office at Tr. 1278. The same is true of other major projects. Tr. 1277-78.

19 But the responsibilities of EFSEC differ from those of local governments. In the  
20 legislative finding for the EFSEA, the purpose of creating EFSEC was to identify a "state  
21 position with respect to each proposed site." RCW 80.50.010. As the Council is aware,  
22 the impetus for this legislation arose from the need to consider applications for large  
23 energy projects which had considerable local opposition, particularly in Skagit County.  
24 Thus EFSLA was intended to provide state-wide perspective on the need for power and

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25  
26 <sup>1</sup>Of the 1,299 non-duplicative written comments received, 86% expressed concern or  
27 opposition to the Whistling Ridge project. Of the total commenters, 79% cited visual/scenic  
28 impacts as a basis for their concern or opposition.

1 on the appropriateness of new energy projects.

2 This obligation to consider the “state position” requires that EFSEC avoid a  
3 parochial approach to review of wind energy permits and focus on a state-wide  
4 perspective. This approach is particularly appropriate where this project is located in the  
5 Columbia Gorge, a resource of statewide, national and indeed international value, which  
6 also involves serious impacts to Oregon lands and residents. The EFSEC website  
7 (<http://www.efsec.wa.gov/council.shtml>) summarizes the Council's responsibilities:

8 By establishing the Council, the State Legislature centralized the evaluation  
9 and oversight of large energy facilities in a single location within state  
10 government. The Legislature called for "balancing" demand for new energy  
11 facilities with the broad interests of the public. As part of the balancing  
12 process, protection of environmental quality, safety of energy facilities, and  
13 concern for energy availability are all to be taken into account by the  
14 Council.

12 It is also appropriate that the Council consider the unusual circumstances by which  
13 this application found its way to EFSEC. Chair Luce is correct in saying that EFSEC's  
14 jurisdiction regarding renewable projects is an “opt in” process for any size plan, i.e. an  
15 applicant may choose to come before EFSEC. Order 868 at page 47. The present  
16 application is a curious one because the apparent impetus for the application came not  
17 from the applicant WRE, but apparently from the Skamania County Commissioners. In  
18 fact, Skamania County Commissioner Paul Pearce discussed, in a private conversation  
19 with the applicant's president Jason Spadaro, the option of WRE taking its application to  
20 EFSEC. Tr. 1343-44. Mr. Pearce stated that it made more sense to go to EFSEC than  
21 for Skamania County to process the application:

22 As I said, because of the decision of the Hearing Examiner the Commission  
23 felt that the EFSEC process made more sense. They are familiar with the  
24 process, they have the authority, and it just made more sense than to  
attempt something under the old codes.

25 Tr. 1345. It appeared to Commissioner Pearce that the applicant might have trouble  
26 getting its project past the Skamania County Hearing Examiner:

27 Q. [by Mr. Aramburu] Would it have been possible for the Applicant to  
28 prepare the application for a conditional use permit for this project under  
the current zoning?

1 A. As I understand it, on the unzoned land because it would be under  
2 current code if it's not considered a nuisance, it would be allowed; then,  
3 yes, I suspect that they could have moved forward with a permit based on  
4 that. That certainly did not in my mind seem like a very likely course based  
5 on the appeal of the zoning ordinance to the Hearing Examiner. EFSEC  
6 seemed like a better process.

7 Tr. 1344 (emphasis supplied). It appears that Commissioner Pearce was concerned that  
8 the Skamania County Hearing Examiner would take a thoughtful approach to permitting  
9 the WRE project, much as she had in requiring an EIS for the proposed new zoning code.  
10 See Exhibit 29.02.

11 SOSA recognizes that this Council has determined that the application was  
12 consistent with the Skamania County Zoning Code and Comprehensive Plan, and has  
13 asked the Council in Section 5 of the brief to reconsider that conclusion. However, there  
14 is no support for the proposition that Skamania County planning documents even included  
15 wind turbines as a use. Consider the following:

16 First, in the area where the WRE proposal is located, Skamania County has no  
17 zoning; Mr. Pearce admits that the property is “unzoned.” That means that “no zoning  
18 had been assigned” and that land uses “within the unmapped areas are not subject to the  
19 standards or conditions of the zoning code.” Finding 8 (page 4), Skamania County  
20 Hearing Examiner decision, February 19, 2009, Exhibit 29.02.

21 Second, the 2007 Skamania County Comprehensive Plan does not even mention  
22 wind turbines. This was confirmed by the Skamania County Hearing Examiner, who  
23 stated that:

24 The 2007 Comprehensive Plan does not contemplate the type of  
25 energy facilities described in the Planning Commission  
26 Recommended Draft.

27 Finding 18 (page 8), Skamania County Hearing Examiner decision, February 19, 2009,  
28 Exhibit 1.17C.

It is also important that, in the now two years since the Hearing Examiner’s  
decision, Skamania County has made no effort to proceed to adopt a zoning ordinance to  
comply with its 2007 Comprehensive Plan; indeed, County Commissioner Pearce says the

1 whole matter has been shelved. Tr. 1343.

2 Third, the County Commissioners are sufficiently concerned about leaving the  
3 unmapped areas unzoned, and unregulated, that they have adopted a blanket moratorium  
4 against converting these lands to any use other than commercial forest. See Exhibit 23.02  
5 (see Attachment B to this Petition.)

6 In fact, the decision to go to EFSEC meant that the applicant and Skamania  
7 County chose to abandon the solely local perspective in Skamania County in favor of the  
8 EFSEC process that statutorily recognizes "the state interest."

9 **3. THERE IS LITTLE SHORT OR LONGER-TERM NEED FOR THE**  
10 **OUTPUT OF THIS PROJECT, DEMONSTRATING THAT THE**  
**PROJECT SHOULD BE DENIED.**

11 As described above, the Council has recognized its "balancing" responsibilities  
12 under the EFSLA. A key to this balancing analysis, to use the Council's own words, is the  
13 "demand for new energy facilities" as well as "concern for energy availability." See also  
14 RCW 80.50.010 ("It is the intent to seek courses of action that will balance the increasing  
15 demands for energy facility location and operation in conjunction with the broad interests  
16 of the public."). The demands for new energy facilities and concern for energy availability  
17 are important issues in these proceedings.

18 During the course of the hearing, SOSA and Friends presented strong evidence on  
19 two essential points regarding the WRE application. First, over the 20 year planning  
20 period there is no substantial demand for the small output of the Whistling Ridge project.  
21 Second, there is current and future glut of wind energy in the Northwest, the result of  
22 which is that operating, under construction and approved wind projects far exceed the  
23 stated requirement for renewable resource energy sources anticipated by I-937.

24 Order 868 at page 15 essentially agrees with SOSA's analysis, but says that I-937  
25 establishes a "legal requirement to increase the portion of power obtained from renewable  
26 resources and to reduce reliance on carbon-based fuels." As will be demonstrated below,  
27 EFSEC has misread its statutory responsibilities as well as the requirements of I-937.



1 Accordingly, EFSEC should reconsider its decision and recommend denial of the WRE  
2 application to the Governor.

3 **3.1. Wind Generation Is by Nature, Variable and Undependable.**

4 At the outset there are several inconvenient truths about wind energy in the  
5 Northwest that need to be recognized as a part of this Council's "concern for energy  
6 availability".

7 *A. Wind energy is produced only when the wind blows; when the wind stops so*  
8 *do the wind turbines.* On average, the wind blows only about 32% of the time; the rest of  
9 the time wind turbines produce no power. See the testimony of Howard Schwartz from  
10 the Washington State Energy office at Exhibit 34.00 (page 6).

11 *B. In the Northwest, wind is less likely to blow when you need it.* Perversely, the  
12 wind in the Northwest is less likely to blow in the winter and summer. Accordingly, wind  
13 energy is usually unavailable when heating is needed during a winter cold snap or air  
14 conditioning during a summer heat wave. See testimony of Professor Michaels at Exhibit  
15 30.00, page 23. Claims that xx number of homes can be powered by a certain amount of  
16 wind energy is only so much puffing: no homes can be provided electricity by wind  
17 turbines when the wind stops blowing.

18 *C. Wind production cannot be accurately anticipated from day to day, week to*  
19 *week or year to year.* Wind is the "now-you-see-it, now-you-don't" renewable resource.  
20 While some improvement is being made in forecasting, it is virtually impossible to know if  
21 the wind will blow, and thus be counted on, from week to week, even year to year. BPA  
22 has noted that total wind generation decreased from the winter of 2008-09 (with 403  
23 average megawatts) to 2009-10 (with 286 average megawatts), even though installed  
24 wind generation capacity increased 1695 MW to 2692 MW. See Exhibit 30.15. The  
25 message is clear: you can't trust Mother Nature to provide wind energy to meet consumer  
26 needs.

27 The reality of the electrical energy supply system is that generation must precisely  
28

1 meet load "24/7," and wind energy in the Northwest is incapable of meeting that criteria.  
2 The variable nature of wind energy makes it a second rate energy source.

3 **3.2 Pacific Northwest Power Needs Are Being Met; Indeed There Is a**  
4 **Surplus of Energy.**

5 There was considerable testimony during the hearing on the issue highlighted on  
6 EFSEC's website referenced above, i.e. "the demand for new energy facilities." On one  
7 point the experts all agreed: there is a surplus of electric energy over the next twenty  
8 years. Here is what these experts said.

9 **A. Pacific Northwest Power Planning and Conservation Council.**

10 The PNWPPC was formed by the Pacific Northwest Power Planning and Conservation  
11 Act of 1980 to produce a power plan for the Pacific Northwest (Washington, Oregon,  
12 Idaho and western Montana) each five years. The most recent plan, the 6<sup>th</sup> Northwest  
13 Conservation and Electric Power Plan, was released in 2010. It states that fully 85% of  
14 the power needs in the Pacific Northwest will be met by energy efficiency and energy  
15 conservation; accordingly needs for new generation are minimal. As the PNWPPC  
16 concluded at Exhibit 30.04 at page 3-2:

17 When new cost-effective conservation is subtracted, the need for additional  
18 generation will be quite small.

19 Chair Luce, in his concurring decision, recognizes and accepts the PNWPPC's  
20 conclusions. Order 868 at page 44.

21 **B. Bonneville Power Administration.** BPA runs the Federal

22 Columbia River Transmission System (FCRTS). In its review of electric resources in  
23 2010, BPA concluded:

24 In the past few years, there has been remarkable growth in wind power  
25 projects interconnecting to BPA's transmission grid, driven by renewable  
26 portfolio standards in Washington and Oregon and increasingly by  
27 California's 33 percent renewable portfolio standard. As a result,  
28 generating capacity is being developed in the Northwest far in advance of  
regional power demand.

BPA Columbia River High-Water Operation, Ex. 30.12 at page 1 (emphasis supplied). In  
its comments made to the state of California Public Utilities Commission, BPA concluded

1 that: "The Pacific Northwest currently has a healthy reserve margin of energy . . ."

2 Exhibit 30.09 at page 9.

3 **C. Washington State Department of Commerce.** The Washington  
4 Department of Commerce intervened before the Council and offered the testimony of  
5 Howard Schwartz, a Senior Energy Policy Specialist in the State Energy Office. See  
6 Exhibit 35.00. In discussing load growth on cross examination, Mr. Schwartz agreed that  
7 the "growth of wind energy is exceeding load growth in the Northwest." Tr. 1043. When  
8 asked how long that condition would continue he stated that:

9 But we expect that because of the addition of various generation resources,  
including wind, that we'll have more power than need for sometime.

10 Q. Sometime being ten years?

11 A. Probably.

12 Tr. 1044.

13 In summary, Washington and Pacific Northwest electric consumers have  
14 demonstrated their willingness to conserve electric energy. These efforts have resulted in  
15 more electric generation being available than demand for it. Indeed, the surplus will  
16 continue for some time as additional renewable generation is added, spurred on by the  
17 availability of tax incentives and outright grants from the federal government. On the  
18 issue of "concern for energy availability," the evidence is overwhelming that no need exists  
19 for the additional power from the Whistling Ridge project.

20 **3.3. There is a Glut of Wind Energy in Washington and the Pacific Northwest.**

21 As described above, there is consensus among the experts that Washington and the  
22 Pacific Northwest in general have a surplus of electrical generation over the actual needs  
23 of consumers. Chair Luce agrees and states in his opinion that "eighty five percent of our  
24 needs can be met with energy efficiency." Order 868 at 44. He also agrees that "we are  
25 also in a surplus condition." *Id.* The full Council portion of Order 868 agrees with these  
26 propositions. See page 15.

27 However, Order 868 at page 15 attempts to skirt the issue by stating that I-937

1 “requires 15% of the energy provided by major utilities in Washington to be from  
2 renewable resources by 2020.” From this citation, the Council concludes that:

3 Thus, irrespective of the region’s ability to meet much of its power growth  
4 through conservation, there is a legal requirement to increase the  
5 proportion of power obtained from renewable resources and to reduce  
6 reliance on carbon-based fuels.

7 *Id.* However, the record reveals that not only is there a glut of wind power, but that the  
8 basic I-937 goals are already met due to the explosion of wind power over the past several  
9 years.

10 Since 2005, there have been many new wind projects constructed or approved:  
11 installed wind capacity has risen from less than 500 MW in 2006 to 3,011 MW in late  
12 2010. See Exhibit 30.18. As SOSA’s energy expert Dr. Robert Michaels stated, the rapid  
13 growth of wind power has occurred for two reasons, neither of which is related to the  
14 need for power: 1) federal tax breaks, rebates and accelerated depreciation for renewable  
15 energy projects and 2) a guaranteed market for wind energy created by adopted  
16 “renewable portfolio standards” (RPS) which require large utilities to have a certain  
17 percentage (15% in Washington) in renewables. See his testimony at Exhibit 30.00, page  
18 26.

19 How much wind generation is required to meet the 15% RPS requirement in  
20 Washington? That question was directly answered in the testimony of Tony Usibelli, the  
21 Director of the State Energy Office, submitted by the Washington State Department of  
22 Commerce. In Exhibit 34.00 (page 6) Mr. Usibelli’s direct testimony states:

23 Conservatively (assuming 32 percent capacity) wind capacity of  
24 approximately 2000 MW five years out rising to 3600 MW in ten years  
25 would be required to meet the standard.

26 If 3600 MW of wind energy is required to meet I-937 requirements, how is the  
27 state doing? The short answer is that there is sufficient wind capacity already approved  
28 and in the queue to meet the I-937 requirement twice over, fully ten years before the  
compliance date of 2020. Chair Luce’s concurring opinion at Footnote xvii (page 51 of  
Order 868) cites data from the American Wind Energy Association (AWEA), an industry

1 trade group, as to wind energy resources being developed in Washington state. That data  
2 shows 2,357 MW of wind on line, 343 under construction and another 5,831 in the queue  
3 to be put on line for a total of 8,531 MW. This is nearly two and half times the 3,600 MW  
4 required to meet I-937 standards. SOSA's energy expert Dr. Michaels compiled similar  
5 data which showed 4,869 MW that was operating, under construction or approved, with  
6 another 2,727 MW in projects proposed for a total of 7,569 MW of wind generation. In  
7 either case, not even counting future proposals, the state of Washington has twice the  
8 amount of wind energy required to meet I-937 RPS standards. As both AWEA and the  
9 National Renewable Energy Laboratory show, Washington state has the potential for  
10 18,478 MW of wind energy, so the state is nowhere close to exhausting its potential for  
11 wind power. See Exhibit 35.12, page 3.

12 Of significance is that Puget Sound Energy, Washington state's largest utility, was  
13 originally involved with this project. PSE even asked BPA to reserve capacity of 75 MW  
14 on FCRTS for this project as late as 2008 (when it was known as the "Saddleback"  
15 project). See Exhibit 29.04. However, as Mr. Spadaro indicated in his testimony at Tr.  
16 94, PSE has backed out of the project, another clear indication that the project is not  
17 needed to meet I-937 standards.<sup>2</sup>

18 Order 868 rests its decision regarding need for the project on the "legal  
19 requirement to increase the proportion of power obtained from renewable resources . . . ."

20 But as described above, the rapid development of wind energy in Washington has seen  
21 the state meet its legal requirements, even though in real world terms of electric supply  
22 and demand, there is no need for additional power. There is no need to approve Whistling  
23 Ridge to meet I-937 renewable standards and, because of the permanent impact on the  
24 world class Columbia Gorge, the project should be denied.

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26  
27 <sup>2</sup>In fact, PSE is selling power or energy credits to California from its wind projects to  
28 California, according to Mr. Usibelli from the State Energy Office. See Tr. 1281-82.

1           **3.4.    Approving Additional Wind Energy Creates Serious Adverse Impacts.**

2           As described above, the undependable Whistling Ridge wind project does not  
3 satisfy unmet power needs nor is it needed to meet the legal requirements of I-937. On  
4 the other hand, some could argue the more renewable resources the better, so let's  
5 approve any wind project that comes along. Such reasoning ignores the reality of  
6 integrating variable wind power into the large and complex BPA transmission system,  
7 creating two serious issues.

8                   **A.       Integration of Wind Power into the Transmission System.**

9           When there was little wind generation carried on the FCRTS, the ups and downs  
10 of wind power (caused by the ebbs and flows of the wind itself) did not pose serious  
11 problems. However, as the number of wind projects dramatically grew, switching on and  
12 off other energy sources, mainly hydro projects, became more difficult and complex.

13           These problems have been recognized by BPA and have now resulted in the  
14 adoption of protocols that call for wind energy to be cut off from the grid during periods  
15 of high water flow. Chair Luce recognized how, with more wind power, integration issues  
16 “complicate the operation of our most valuable, already existing renewable resource, the  
17 Federal Columbia River Hydro System.” Order 868 at page 45. In his Footnote iv he  
18 cites to the recent adoption by BPA of the Record of Decision that establishes how and  
19 when wind resources will be cut off from the FCRTS during high flows.

20           These serious problems exist now with only about 2800 MW of wind energy  
21 connected to the federal grid. The recent action of BPA is only a stop-gap measure  
22 because there are already planned projects in Washington alone that will result in 8,531  
23 MW of planned energy as described in Chair Luce's Concurring Opinion.

24           The truth of the matter is that with just another 3,000 MW of wind power, BPA  
25 will no longer be able to balance the ups and downs of wind energy. BPA recently stated  
26 that:

27           BPA is already carrying close to 2000 MW of balancing capacity to manage  
28 variability and uncertainty in our system, most of it for the up and down ramps and

1 forecast errors associate with 2800 MW of wind on it system. With another  
2 doubling of the wind on the BPA system, BPA will exceed the ability of its existing  
3 hydro assets to manage the total variability or uncertainty of the wind fleet.

4 Moreover, the BPA balancing authority has a minimum load of 4,000 MW in the  
5 spring and early summer, placing an absolute operational limit on the amount of  
6 wind energy BPA can absorb within the hour.

7 Exhibit 30.09 at page 5 (emphasis supplied). Not only does BPA describe these limits, so  
8 does the witness of the Washington State Department of Commerce, Mr. Schwartz:

9 But it is true at some point Bonneville will exhaust the capacity of the hydro  
10 system to integrate wind and other resources to integrate wind will be needed.

11 Tr. 1032.

12 As described above there are multiple wind projects that are already permitted,  
13 proposed and in the queue. The Whistling Ridge project coming late to the game is likely  
14 to be a project that will contribute to these substantial impacts to the distribution system.  
15 Again, there is no basis to conclude that the project is valuable to meet power needs;  
16 indeed it is likely it will simply add to existing problems.

17 **B. Project Use of Carbon-based Fuels to Balance Whistling Ridge**  
18 **Variable Energy.**

19 In Order 868 at page 15, the Council concludes, even in light of the glut of wind  
20 power and the surplus of electric energy in general, that I-937 requires an “increase in the  
21 proportion of power obtained from renewable resources” but also imposes a requirement  
22 to “reduce reliance on carbon-based fuels.”

23 As noted above, Washington is already fully meeting the I-937 requirements for  
24 15% renewable energy by 2020. But, will the Whistling Ridge project actually reduce  
25 reliance on carbon-based fuels? The evidence is clearly otherwise.

26 As described above, BPA is already running out of options to balance the wind  
27 resources on the FCRTS. Indeed it is now evident that to fully utilize wind energy,  
28 another source of energy will be required. As Professor Michaels, SOSA's qualified and  
experienced energy witness testified: "a system dependent on wind must also invest in  
dispatchable generation equal to a significant fraction of that capacity." See Exhibit 30.00

1 at 11. Again, Commerce witness Schwartz from the State Energy Office also testified on  
2 this subject:

3 Q. [by Mr. Aramburu] Okay. And let me ask you a question about the wind  
4 energy outputs. Is it likely in the future that wind energy outputs will need  
5 to be balanced by other more dispatchable sources of energy such as gas  
6 turbines?

7 A. Well, if I can parse that a little bit. Gas turbines are not more  
8 dispatchable than hydro necessarily. But it is true that at some point  
9 Bonneville will exhaust the capacity of the hydro system to integrate wind  
10 and other resources to integrate wind will be needed.

11 Q. And would those most likely be gas turbines or some other fossil fuel  
12 burning plant?

13 A. As of now the primary candidate is natural gas. We're seeing the  
14 development of a fair amount of biomass plants in Washington which might  
15 be able to integrate wind as well.

16 Tr. 1032 (emphasis supplied).

17 The irony here is evident: supposedly "clean" renewable projects are now likely to  
18 be required to have their own back up energy. This "backup" is likely to be a carbon-  
19 based fuel such as natural gas or biomass. Given the number of projects under  
20 development already it is likely that a carbon based resource will be required to balance  
21 the variabilities of wind energy from proposals such as Whistling Ridge.

22 **3.5. EFSEC Should Not Approve Projects That Are Likely to Sell Their**  
23 **Output to Utilities Outside the State.**

24 As described above, Washington state is already meeting the RPS standards as  
25 required by I-937. However, other states, principally California, have developed RPS  
26 standards of their own. A market is created because the California RPS ratios are  
27 substantially greater than Washington's (33% v. 15%). Indeed Commerce witness (and  
28 head of the State Energy Office) Tony Usibelli confirmed that California utilities will pay  
more for renewable energy than their Washington counterparts. See Tr. 1282.

Indeed, in its report to the California Public Utilities Commission in 2010, BPA  
stated that:

By the end of the year, BPA estimates that 47 percent of the wind  
generation capacity connected to our system will be under contract to  
California utilities. BPA is preparing for the possibility of another doubling  
of installed wind generation to our balancing authority by 2013 and



1       anticipates that demand from California will be the single largest driver of  
2       wind energy growth on our system in the coming years.

3       Ex. 30.09 at page 3 (emphasis supplied). Commerce witness Schwartz confirmed that  
4       “More than 50 percent of the most recent build out of wind is destined to California.” Tr.  
5       1044.

6       When it filed its application, WRE told EFSEC that: “the Whistling Ridge Energy  
7       Project is designed to provide low cost renewable electric energy to the growing needs of  
8       the Pacific Northwest.” Application at page I-1 and testimony of WRE’s president Jason  
9       Spadaro at Tr. 120. Despite this, when telling it like it is, Mr. Spadaro said that the  
10      project, or its output, would be sold to the “highest available market.” Tr. 122.

11      However, the decision of the Council rests (despite the glut of wind power in  
12      Washington and the obvious failure to show need) on the state policies and legal  
13      requirement to develop wind power under I-937. Order 868 at page 15. However, if the  
14      Whistling Ridge power is sold to California utilities, for use in California, the output of the  
15      project will not go to satisfying the requirements of I-937. This is confirmed by  
16      Commerce witness Schwartz at Tr. 1049.

17      Since the applicant has stated that it will sell to the “highest market” and since  
18      most wind power has been sold to California utilities, it is highly likely that the Whistling  
19      Ridge project will do nothing to meet the 15% RPS standard in Washington’s I-937. Such  
20      a result would export Washington resources without any return to the state except for  
21      short term construction employment and 7-8 part or full time jobs. It will also create  
22      impacts for other Washington utilities by stressing the grid. Of greater significance, the  
23      project will permanently scar the scenic qualities of the Columbia Gorge, an area  
24      “recognized as an environmental wonder” by Chair Luce. Order 868 at 45.

25      If the project, or its output, is sold to California utilities, then the goals of the  
26      EFSEC statute will not be met either. There is nothing in the state’s energy policy that  
27      supports using Washington lands and resources to produce power to send out of state. It  
28      will not create “abundant power” for the state of Washington if the power is sold to

1 utilities thousands of miles away. There will be a single beneficiary, the project developer,  
2 out to "maximize our investment." Testimony of Jason Spadaro at Tr. 122. In short, the  
3 state of Washington has not made a policy decision to export energy generated in-state.  
4 As the evidence points to export of the Whistling Ridge power, the Whistling Ridge  
5 project should be denied outright.

6 If EFSEC is to consider approval of this project, it should come with a condition  
7 that would be specified in the SCA that the power generated will meet the RPS standards  
8 of I-937 codified in ch. 19.285 RCW. This is fully supported by the Declaration of Policy  
9 in RCW 19.285.020, which states the purpose of I-937 is to "promote energy  
10 independence in the state and the Pacific Northwest region." The declaration makes clear  
11 that only "appropriately sited" renewable energy projects will be allowed. This policy  
12 declaration makes clear the intent is to benefit Washington residents and consumers:

13 Making the most of our plentiful local resources will stabilize electricity  
14 prices for Washington residents, provide economic benefits for Washington  
15 counties and farmers, create high- quality jobs in Washington, provide  
16 opportunities for training apprentice workers in the renewable energy field,  
17 protect clean air and water, and position Washington state as a national  
18 leader in clean energy technologies.

19 Washington voters approved I-937 to benefit and protect Washington residents and  
20 consumers, not those out of state. I-937 would not have received the modest support it  
21 did (52% voted for it) if its intent was to encourage the exportation of power produced  
22 using Washington lands. In short, nothing in the statute supports the export of energy  
23 outside Washington.

24 Accordingly, if the Council decides not to reconsider its approval of the Whistling  
25 Ridge project, a condition should be attached to the SCA that states: "All power  
26 generated by the Whistling Ridge Energy project will be sold, used or distributed to meet  
27 the targets for energy delivered to Washington customers under RCW 19.285.040."

1     **4.     THE DECISION FAILED TO CONSIDER WHETHER THE PROJECT**  
2     **WOULD PROVIDE POWER “AT REASONABLE COST.”**

3             As noted above, the prime responsibility of EFSEC is to balance the need for  
4     electric energy with the impacts of the project on the environment and the broad public  
5     interests. See Order 868 at p. 15. Part of this review concerns the “legislative directive to  
6     provide for abundant energy at a reasonable cost.” See Order 868 at 15 and RCW  
7     80.50.010(3).

8             Though Order 868 recognized the statutory directive to determine if a project  
9     within the adjudication will provide the energy “at a reasonable cost,” nowhere in the  
10    Recommendation Package is there any discussion of “cost,” or whether the ultimate cost  
11    to consumers of this power will be “reasonable.” All that is included in Order 868 and  
12    869 is a bare and unsupported conclusion that the energy from this project will be at a  
13    reasonable cost. See Order 868 at 19; Order 869 at page 18.

14            Whether Whistling Ridge power will be provided at reasonable cost to consumers  
15    is particularly important during the current recession. Struggling businesses, large and  
16    small, are adversely impacted by high electric rates, particularly those with high  
17    consumption like “tech” industries. Indeed it is state policy, as reflected in Order 868  
18    (page 15), that retail consumers be informed not only of the types of electric energy in the  
19    “fuel mix” of that utility, but also the electric rates for each consumer class. See RCW  
20    19.29A.020(9)(a). The Act also requires that each utility disclose “the amount invested by  
21    the electric utility in . . . nonhydrorenewable resources” together with the “source of  
22    funding for the investments.” RCW 19.29.020(9)(c). I-937 “requires 15% of the energy  
23    provided by major utilities in Washington to be from renewable resources by 2020.”  
24    Order 868 at 15. Accordingly, major Washington utilities are essentially forced to  
25    purchase renewable resources and Washington consumers are forced to pay for them. As  
26    such it is important to know whether this project will deliver power to consumers at  
27    reasonable cost.

1 Order 869 says that: "Power generated by the Whistling Ridge project will be  
2 offered to buyers at rates determined by market forces." Page 6. However, that statement  
3 avoids the statutory responsibility of the EFSEC to determine whether these costs will be  
4 "reasonable." As a starting point to determine "reasonable cost," I-937 incorporates the  
5 concept of "cost effective" energy development in RCW 19.285.010(5) and adopts the  
6 definition of "cost effective" from RCW 80.52.030, which provides:

- 7 (7) "Cost-effective" means that a project or resource is forecast:  
8 (a) To be reliable and available within the time it is needed; and  
9 (b) To meet or reduce the electric power demand of the intended  
10 consumers at an estimated incremental system cost no greater than that of  
11 the least-cost similarly reliable and available alternative project or resource,  
12 or any combination thereof.

13 Thus the issue of reasonable cost should be compared to other resources which are  
14 "reliable" and whether the cost would not be greater than the "least cost similarly reliable  
15 and alternative project or resource."

16 Based on the foregoing, it is apparent that the Recommendation Package did not  
17 analyze and decide whether the output from this project would be available at "reasonable  
18 cost." Such analysis should include an accurate reflection of the cost to construct the  
19 facility, an estimate of the price at which the Whistling Ridge production would be sold,  
20 and a comparison with other sources. Included in this analysis should be anticipated  
21 contribution from the various federal taxes, grant subsidies and other costs such as  
22 providing balancing as well as costs of new balancing resources such as gas turbines.

23 The Recommendation Package fails to address a key factor in review of energy  
24 projects, whether the power produced will be at "reasonable cost" to the consumer. The  
25 Council should reconsider its decision and specifically analyze whether the Whistling  
26 Ridge project will produce power which will be at "reasonable cost" to consumers.

1 **5. THE COUNCIL ERRED IN DETERMINING THAT THE WHISTLING**  
2 **RIDGE PROJECT WAS CONSISTENT WITH SKAMANIA COUNTY'S**  
3 **COMPREHENSIVE PLAN AND ZONING ORDINANCES.**

4 **5.1 Background.**

5 The Council devotes pages 8-13 of its Order 868 to land use consistency. EFSLA  
6 requires that the Council make determinations as to whether the proposal is consistent  
7 with local land use plans and zoning ordinances; RCW 80.50.090(2) provides as follows:

8 (2) Subsequent to the informational public hearing, the council shall  
9 conduct a public hearing to determine whether or not the proposed site is  
10 consistent and in compliance with city, county, or regional land use plans  
11 or zoning ordinances. If it is determined that the proposed site does  
12 conform with existing land use plans or zoning ordinances in effect as of  
13 the date of the application, the city, county, or regional planning authority  
14 shall not thereafter change such land use plans or zoning ordinances so as  
15 to affect the proposed site.

16 The Council concluded in Order 868 that the Whistling Ridge proposal was consistent  
17 with both the Skamania County Zoning Code and the 2007 Skamania County  
18 Comprehensive Plan.

19 In making its decision, the Council erred in concluding that the Skamania County  
20 zoning code (from 2005) or the later adopted comprehensive plan (from 2007) was  
21 consistent with the construction of the Whistling Ridge wind turbine project.<sup>3</sup>

22 **5.2 The Council Misinterpreted its Statutory Duties with Respect to**  
23 **consistency with the Skamania County Comprehensive Plan.**

24 As noted above, the EFSLA requires that the Council determine whether this  
25 industrial wind turbine project is consistent with the Skamania County Comprehensive  
26 Plan adopted in 2007.

27 The Council starts its review by marginalizing the Comprehensive Plan as a  
28 “guide” not a “mandate.” But this begs the question: RCW 80.50.090(2) requires that

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29 <sup>3</sup>Interestingly, Skamania County Commissioner Pearce made the suggestion that WRE come to  
30 this Council rather than proceed with the project before the County. In his testimony,  
31 Commissioner Pearce thought that this Council was “more familiar with the process (of siting  
32 energy projects)” and that “it just made more sense than to attempt something under the old codes.”  
33 Tr. 1345.

1 EFSEC determine whether the proposed project is consistent, compliant, and in  
2 conformance with the comprehensive plan and the zoning code. Whether a guide, a  
3 mandate, or something in between, the Council must consider consistency, compliance and  
4 conformity of the project with the comprehensive plan.

5 Even if the foregoing were not true, the Council erred in not considering the  
6 Skamania County Comprehensive Plan a regulatory document.

7 First, it is very clear that there was no zoning for the area of the project. The 2005  
8 zoning ordinance for unmapped areas says that:

9 The standards, provisions and conditions of this title shall not apply to  
10 unmapped areas.

11 Essentially there were, and are, no land development rules for this area. As the Council  
12 recognizes, there are not even any plans for the adoption of rules, which have been  
13 “shelved” in the words of Skamania County Commissioner Paul Pearce. Tr. 1343.

14 This fact was further recognized by the Skamania County Commissioners on the  
15 very day they adopted the comprehensive plan through their simultaneous adoption of a  
16 land use moratorium. See Exhibit 23.02 (see Attachment B). The reason for this  
17 moratorium was that the county had never zoned broad areas of the county that were  
18 principally in timber production, including the area in which this project is found. As the  
19 Commissioners said in their moratorium:

20 there are over 15,000 acres of private land within unincorporated Skamania  
21 County that do not have zoning classification

22 Exhibit 23.02 (Attachment B). The Skamania County Commissioners were rightly  
23 concerned that these areas were ripe for development without zoning. The  
24 Commissioners thus concluded that: “Skamania County is in the process of updating  
25 zoning classifications for all land within unincorporated Skamania County to be consistent  
26 with the adopted Comprehensive Plan or adopted subarea plans; . . .” Exhibit 23.02.  
27 Such moratoria are specifically permitted by the Planning Enabling Act under RCW  
28

1 36.70.795 for periods of up to six months. Extensions up to one year are permitted, but  
2 only “if a work plan is developed for related studies providing for such a longer period.”

3 The Council also discusses issues of the hierarchy between the older zoning  
4 ordinance and the later adopted Comprehensive Plan, asserting that the comprehensive  
5 plan is merely a “guide” not to be given regulatory effect. But the Council misses the  
6 point: the Legislature required the Council to determine whether projects are consistent  
7 and in compliance with applicable comprehensive plans, not to engage in a lengthy  
8 legalistic and philosophical discussion of comprehensive plans and their place in  
9 Washington land use law. The terms of EFSLA do not distinguish between zoning  
10 ordinances and comprehensive plans, and require establishment of compliance with both.  
11 The Council cannot shirk its responsibilities by artificially segregating between the two by  
12 essentially saying one does not count.

13 The Council’s interpretation is a clear error of law, both under the Planning  
14 Enabling Act which controls Skamania County planning and under the County’s own 2007  
15 Comprehensive Plan.

16 **5.3 The Planning Enabling Act Requires the Comprehensive Plan to Be**  
17 **Used as the “Basic Reference” in EFSEC’s Recommendation to the**  
**Governor.**

18 Under the Planning Enabling Act, applicable to Skamania County, the County  
19 must prepare a comprehensive plan under RCW 36.70.310 (“Each planning agency shall  
20 prepare a comprehensive plan for the orderly physical development of the county . . . .)  
21 The statute also makes clear that the comprehensive plan will be the “basic source of  
22 reference” in reviewing any project that comes before the County:

23 After a board has approved by motion and certified all or parts of a  
24 comprehensive plan for a county or for any part of a county, the planning  
25 agency shall use such plan as the basic source of reference and as a guide in  
26 reporting upon or recommending any proposed project, public or private,  
27 as to its purpose, location, form, alignment and timing. The report of the  
28 planning agency on any project shall indicate wherein the proposed project  
does or does not conform to the purpose of the comprehensive plan and  
may include proposals which, if effected, would make the project conform.

1 RCW 36.70.450 (emphasis supplied). The 2007 Comprehensive Plan must be used as the  
2 “basic source of reference” by the Council in its “recommending” the Whistling Ridge  
3 project as to its “purpose, location, form, alignment and timing.”

4 Order 868 cites RCW 36.70.340 and the 1981 Court of Appeals case of *West Hill*  
5 *Citizens for Controlled Development Density v. King County Council*, 29 Wn.App. 168,  
6 627 P.2d 1002 (1981) at page 11 of Order 868 to argue the comprehensive plan is just a  
7 “guide” with little significance. However, the Council fails to recognize the changes made  
8 in the Planning Enabling Act adopted as a part of the Growth Management Act in 1990.  
9 Though the GMA did not extend all of its terms to Skamania County, the GMA did  
10 amend the Planning Enabling Act specifically to add the following:

11 **RCW 36.70.545. Development regulations--Consistency with**  
12 **comprehensive plan.** Beginning July 1, 1992, the development regulations  
13 of each county that does not plan under RCW 36.70A.040 shall not be  
14 inconsistent with the county's comprehensive plan. For the purposes of this  
15 section, “development regulations” has the same meaning as set forth in  
16 RCW 36.70A.030.

17 Thus the hierarchy changed: from July 1, 1992 on, comprehensive plans are the  
18 controlling planning document.

19 **5.4 The 2007 Comprehensive Plan Itself Indicates It Is to Be Used as the**  
20 **Basic Reference in Recommending Projects.**

21 The Council’s interpretation of the 2007 Comprehensive Plan is that it is only a  
22 guide to development. The Council states at page 11 of Order 868 that: “Comprehensive  
23 plan goals are not mandatory without clear indication that such is required by the local  
24 jurisdiction.” Indeed, Washington law now establishes that a local government can choose  
25 to require that an individual use or permit comply with the comprehensive plan:

26 If a zoning code explicitly requires that all proposed uses comply with a  
27 comprehensive plan, then the proposed use must comply with both the  
28 zoning code and the comprehensive plan. *Cingular Wireless, LLC v.*  
*Thurston County*, 131 Wash.App. 756, 770, 129 P.3d 300 (2006); see  
*Weyerhaeuser v. Pierce County*, 124 Wash.2d 26, 43, 873 P.2d 498  
(1994).

*Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007). See also *West Main*  
*Assocs. v. Bellevue*, 49 Wn.App. 513, 524-25, 742 P.2d 1266 (1987) (noting that



comprehensive plans can be given regulatory effect through enactment, in whole or part, as a regulation or ordinance), *review denied*, 112 Wn.2d 1009 (1989).

In fact, the 2007 Skamania County Comprehensive Plan required, in unequivocal language, that individual projects be consistent with it:

Policy L.U.2.6: Building permits, septic tank permits, or other development permits issued by the County for any project shall be in conformance with this Comprehensive Plan.

This is a clear, and unmistakable, requirement that development permits, such as those required for the WRE project, “conform to” the comprehensive plan. Significantly, RCW 80.50.090(2) also requires the Council to determine whether the project “conforms” to the comprehensive plan.

That the Commissioners meant precisely what they said is confirmed by comparing how the Commissioners changed the 2007 Comprehensive Plan from the prior 1977 Comprehensive Plan. The 1977 Comprehensive Plan on this point used nearly identical language, but treated conformance with the comprehensive plan entirely differently. As to Policy L.U.2.6, the plan document has changed from the identical provision in the 1977 Comprehensive Plan, which was:

Building permits, septic tank permits, or other development permits issued by the County for any project not in conformance with this comprehensive plan should be subjected to strict review.

Exhibit 2.04c (1977 Plan), page 17. The 1977 Comprehensive Plan only required projects not conforming to the comprehensive plan to be “subjected to strict review,” not denial. However, the 2007 Comprehensive Plan requires conformance with it while employing the same introductory language. The change in comprehensive plan language demonstrates that the 2007 Comprehensive Plan is intended to control project decisions.

**5.5 Industrial Scale Wind Turbines Are Not Consistent Nor in Conformance with Either the 2005 Skamania County Zoning Ordinance or 2007 Comprehensive Plan.**

As described above, the Council is obligated to determine whether the Whistling Ridge wind turbine project is “consistent,” “in compliance” and “conforms” with county

land use plans and zoning ordinances. The Council erred in determining that the project met these consistency requirements.

The most obvious error in the Council analysis is that neither the 2007 Comprehensive Plan nor the 2005 Zoning Code mention wind turbines or wind farms as a permitted, conditional or special use. Was this because the Skamania County Commissioners were not aware of wind turbines, or somehow overlooked them? This argument fails because the 2005 Zoning Code specifically recognized and defined “wind turbine” in Section 21.08.010 as follows:

"Wind turbine" means a machine with turbine apparatus (rotor blades, nacelle and tower) capable of producing electricity by converting the kinetic energy of wind to rotational, mechanical and electrical energy; provided, the term does not include electrical distribution or transmission lines, or electrical substations.

This careful and comprehensive zoning definition, employing precise terminology, shows that the Commissioners knew exactly what wind turbines were, fully two years before the 2007 Comprehensive Plan was adopted. The inescapable conclusion is that the Commissioners, knowing what wind turbines were, deliberately chose to not include wind turbines as permitted uses.

Even in light of the obvious fact that the Commissioners have chosen not to permit wind turbines, the Council states that it would “analogize to existing provisions” of the comprehensive plan. Order 868, page 13. This effort ignores statewide interests in preserving and protecting timberlands.

The Council claims that “wind energy” is a “natural resource” by a reference to Wikipedia, then argues that the purpose of the Conservancy zone in the 2007 Comprehensive Plan is to “conserve and manage existing natural resources in order to maintain a sustained yield and or utilization.” *Id.* The council says there is no definition of “natural resources” in the 2007 Comprehensive Plan. That is correct. However, under GMA, “natural resources” are clearly defined and described:

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and

1 fisheries industries. Encourage the conservation of productive forest lands  
2 and productive agricultural lands, and discourage incompatible uses.  
3 (Emphasis supplied.) Under 36.70A.170, each county (including Skamania) is required to  
4 designate “natural resource” lands as follows:

5 36.70A.170. Natural resource lands and critical areas--Designations

6 (1) On or before September 1, 1991, each county, and each city, shall  
7 designate where appropriate:

8 (a) Agricultural lands that are not already characterized by urban  
9 growth and that have long-term significance for the commercial production  
10 of food or other agricultural products;

11 (b) Forest lands that are not already characterized by urban growth and  
12 that have long-term significance for the commercial production of timber;

13 (c) Mineral resource lands that are not already characterized by urban  
14 growth and that have long-term significance for the extraction of minerals;  
15 and

16 (d) Critical areas.

17 RCW 36.70A.020. Indeed, RCW 36.70A.060 requires that all counties, not just GMA  
18 counties, act: “to assure the conservation of agricultural, forest and mineral resource lands  
19 designated under RCW 36.70A.170.”

20 Thus under the GMA provisions applicable to Skamania County beginning in 1991  
21 (twenty years ago), “natural resources” took on a particular meaning as applying to  
22 agricultural, forest and mineral resources lands which had long-term commercial  
23 significance. Nowhere has the legislature expanded the definition of “natural resource  
24 lands” to protect areas for wind energy production.

25 **5.6 The Project Violates the Skamania County Land Use Moratoria First**  
26 **Adopted in 2007.**

27 As described above, “natural resources” means agricultural use, mineral extraction,  
28 and, significant to Skamania County, timber lands.

Thus when the 2007 Comprehensive Plan at page 25 says that: “Conservancy areas  
are intended to conserve and manage existing natural resources in order to maintain a  
sustainable resource yield and or utilization”, the “natural resources” referenced were  
those described earlier in the paragraph, i.e. “Logging, timber management, agricultural  
and mineral extraction,” the precise same “natural resources” described in the GMA. The  
conservation of those areas is consistent with the state mandate to protect natural

1 resources lands in RCW 36.70A.060. This is confirmed by the moratoria adopted by the  
2 Commissioners after the 2007 Comprehensive Plan was adopted (which referenced the  
3 GMA): "WHEREAS, the Growth Management Act requires all counties in the state of  
4 Washington to provide protections for commercial timber land from the encroachment of  
5 residential uses." See Exhibit 23.02, page 1.<sup>4</sup>

6 It is clear that Skamania County's moratorium, now continuously in effect since  
7 the adoption of the 2007 Comprehensive Plan (more than 4 years), prohibits the Whistling  
8 Ridge project, which is proposed to be built on commercial timber lands.

9 As indicated in the FEIS: "The project area is on land managed for commercial  
10 forestry . . ." FEIS at 2-14. The FEIS elaborates as follows: "All of the parcels on which  
11 the Project is located are managed for a continual cycle of growth harvest and replanting"  
12 describing the wind turbine site as a "longstanding commercial forest site. . . ." FEIS at  
13 2-15. The FEIS even has a "Harvesting Schedule" at Figure 2-3 showing when these  
14 parcels were last cut.

15 The FEIS goes on to admit that the timber cutting for the project is indeed "forest  
16 conversion" at page 2-15 of the FEIS:

17 The permanently disturbed, cleared area described above would be  
18 considered a "forest conversion" under the Washington Forest Practices  
Act, because it is being implemented for purpose of the Project.

19 In fact, the rolling moratoria adopted by Skamania County is aimed directly as these  
20 "forest conversions:" the moratorium specifically states that it will not accept or process  
21 "State Environmental Policy Act (SEPA) checklists related to forest conversions for any  
22 parcel located within unincorporated Skamania County that is not currently located within  
23 a zoning classification. . . ". See Exhibit 23.02 (emphasis supplied). This applied directly to  
24  
25

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26 <sup>4</sup>The reference to "residential uses" is more restrictive than the provisions of RCW 36.70A.060  
27 that require protection from all non-timber uses.

1 the Whistling Ridge project: it is not located within a zoning classification, is admittedly  
2 commercial forest land and is proposed to be converted to a non-forest use.

3 Order 868 mistakenly asserts (at page 15) that the moratorium has to do with  
4 forest practices, not zoning. But forest conversions are zoning matters concerned with  
5 changing the use of land, in this case, from forest production to a use incompatible with  
6 forest use.<sup>5</sup> It is apparent that the Whistling Ridge clearing work is a forest conversion  
7 and is plainly inconsistent with Skamania County's continuing moratorium, a zoning  
8 matter. The Council should reconsider its decision and hold that the Whistling Ridge  
9 project is not consistent, in compliance with, or conforming with Skamania County Zoning  
10 Ordinances.

11 **5.7 The Council Has Not Explained Why Skamania County Prohibitions**  
12 **Against Conversion of Forest Land to Other Uses Are Not Enforced.**

13 As described above, Skamania County has adopted an explicit moratorium against  
14 precisely what WRE plans: the conversion of commercial forest land to other uses. This is  
15 a land use matter, not a forest practice issue.

16 The prohibition of conversion of forest land to other uses is not just a local zoning  
17 preference, but involves important statewide interests. Skamania County has adopted its  
18 moratorium because it knows it must comply with provisions of the GMA:

19 WHEREAS, the Growth Management Act requires all counties in the State  
20 of Washington to provide protections for commercial forest land . . ."

21 Exhibit 23.02 (Attachment B).  
22  
23

24 <sup>5</sup> That there may be have been recent timber harvests makes no difference. Commercial  
25 forest land The moratorium makes clear it is intended as a zoning action when it cites as  
26 authority the provisions of the County Planning Enabling Act authorizing such moratoria,  
27 RCW 36.70.795:

28 WHEREAS, the Board of County Commissioners intends for these recitals  
to constitute its "findings of fact" as required by RCW 36.70.795  
Exhibit 23.02.

1 RCW 36.70A.060 requires the adoption of protections for commercial forest land  
2 and Skamania County has met that requirement by providing a moratorium. Why then  
3 does the Council conclude that the Whistling Ridge project, which does exactly what is  
4 prohibited by the County's moratorium, is consistent with the zoning enactment? Or if not  
5 consistent, why the County rules require preemption?

6 What important factual or policy issues support ignoring Skamania County's  
7 attempt to protect its own forest lands, even ignoring for the moment that it is located in  
8 the "international treasure" of that "wild and beautiful place" called the Columbia Gorge?  
9 None are identified in the Recommendation Package. Is there something special about this  
10 project that compels the Council to allow these forest lands to be converted to another use  
11 or that the Council should take over their regulation? The property owner here, SDS  
12 Lumber, is like many hundreds of other owners of commercial forest land: they want out  
13 of the timber business to get into something more profitable. Is there something very  
14 special about the Whistling Ridge project, or the property on which it sits, that merits  
15 abandoning protection for commercial forests? Nothing is mentioned in the  
16 Recommendation Package on the subject and the applicant has steadfastly refused to  
17 disclose any details about the merits of the project. The precedent for approval of wind  
18 projects in these circumstances carries serious implications for the future. What is known  
19 is that there are many available sites that remain for development of wind energy, if indeed  
20 the Council wishes to ignore the energy surplus and the glut of wind energy in Washington  
21 state.

22 This Council is the body that must carry out the basic policy of the the EFSLA,  
23 which "requires the development of a procedure for the selection and utilization of sites  
24 for energy facilities and the identification of a state position with respect to each proposed  
25 site." RCW 80.50.010. The Council should follow this basic policy, reconsider the  
26 Whistling Ridge project and establish a state position regarding this site, consistent with  
27 state rules and local ordinances.

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3           **6.       CONCLUSION AND REQUEST FOR RELIEF.**

4           The Council has taken an important first step by eliminating the A1-7 and C  
5 Corridors from the Whistling Ridge project. However, the Council is respectfully  
6 requested to reconsider its decision and thereafter deny the entire project.

7           As Chair Luce notes, the Columbia Gorge is one of only two areas in the United  
8 States that are specifically recognized for their scenic qualities; indeed Governor Gregoire  
9 calls the area an international treasure. In light of this recognition, and the challenge to  
10 "inspire pride, passion and creative thinking for the future stewardship of this special  
11 place," why should this Council approve the Whistling Ridge project?

12           Whistling Ridge is certainly not a special project. It is a minor project that, because  
13 it is wind driven, produces energy only about one-third of the time and thus it cannot be  
14 counted on to meet consumer loads. Due to the will and determination of Washington  
15 residents, future energy needs are now being met by energy efficiency and conservation,  
16 with little need for new generation. Indeed, there is a consensus of the experts that we  
17 have a surplus of power for the foreseeable future, with a glut of wind energy which is  
18 creating serious problems with the existing power grid. The old saying "our eyes are  
19 bigger than our stomach" certainly applies here.

20           The Council has also overlooked its obligation to determine whether this new  
21 energy source would provide power at reasonable cost to consumers. In a time of  
22 recession, cost issues must take center stage. But this issue is not even discussed by the  
23 Council.

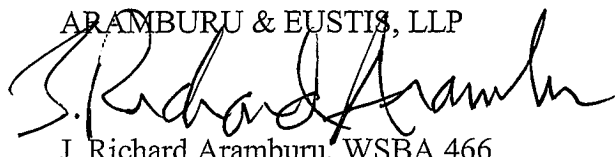
24           Whistling Ridge is also clearly in conflict with planning and zoning rules in  
25 Skamania County. The planning documents do not mention wind turbines in their list of  
26 uses. More importantly, the most current comprehensive plan of the county places the  
27 Whistling Ridge area in the "Conservancy" category to protect its timber resources. The  
28

1 of the Growth Management Act to conserve and protect commercial forest lands.  
2 However, this Council sweeps aside the moratorium and its policy, but without saying  
3 why this project, or this land, has the particular qualities and value that merit such  
4 exemption or preemption.

5 All the foregoing factors indicate the need for the Council to closely reconsider  
6 these factors, and those that might be raised by other parties. Once this reconsideration  
7 has been completed, SOSA requests that the Council expand its elimination of part of the  
8 project and deny it in its entirety.

9 Respectfully submitted,

10 ARAMBURU & EUSTIS, LLP

11 

12 J. Richard Aramburu, WSBA 466





## OFFICES OF THE GOVERNORS

JOHN KITZHABER  
OREGON

CHRISTINE O. GREGOIRE  
WASHINGTON

In 1986, the Columbia River Gorge National Scenic Area Act created landmark legislation to protect the scenic landscapes, natural habitat, cultural resources, and outdoor recreation, while at the same time support the economic development of Gorge communities. This year, the Columbia River Gorge National Scenic Area celebrates its 25<sup>th</sup> anniversary.

In the quarter century since, the Act has created clear successes: over 40,000 acres of land acquired for public use, the restoration of the Historic Columbia River Highway, a Management Plan that has helped limit the impacts of new development, and \$11 million in grants and loans to businesses in the Columbia River Gorge.

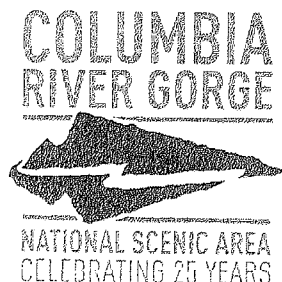
The Columbia River Gorge is like no place on earth. Volcanic eruptions and Ice Age floods have created a spectacular river canyon slicing through the Cascades Mountains. It is also home to the largest collection of waterfalls in North America and a host to wildflowers that exist nowhere else on earth.

This wild and beautiful place is more than just scenery. Rich in tribal history, it has served as a human corridor for tens of thousands of years, was explored by Lewis and Clark, and traversed by thousands of Oregon Trail pioneers. Today, the Gorge is home to over 70,000 people in 13 communities. It is a place where people make their homes, work and play every day.

The Columbia River Gorge is an international treasure. We must build upon the efforts of the first 25 years and work to inspire pride, passion, and creative thinking for the future stewardship of this special place.

John Kitzhaber  
Governor of Oregon

Christine O. Gregoire  
Governor of Washington



**ORDINANCE 2010-06**

**(AN ORDINANCE TO EXTEND A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF ANY BUILDING, MECHANICAL, AND/OR PLUMBING PERMITS ON ANY PARCEL OF LAND THAT IS 20 ACRES OR LARGER THAT WAS CREATED BY DEED SINCE JANUARY 1, 2006, THE ACCEPTANCE AND PROCESSING OF LAND DIVISIONS (SUBDIVISION AND SHORT SUBDIVISION), AND THE ACCEPTANCE AND PROCESSING OF STATE ENVIRONMENTAL POLICY ACT (SEPA) CHECKLISTS RELATED TO FOREST PRACTICE CONVERSIONS FOR ANY PARCEL LOCATED WITHIN UNINCORPORATED SKAMANIA COUNTY THAT IS NOT CURRENTLY LOCATED WITHIN A ZONING CLASSIFICATION OR THE AREA GENERALLY KNOWN AS THE SWIFT SUBAREA OF SKAMANIA COUNTY.)**

**WHEREAS**, the Board of County Commissioner adopted the 2007 Comprehensive Plan on July 10, 2007; and,

**WHEREAS**, the Board of County Commissioner, on December 30, 2008, extended for the third time, the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

**WHEREAS**, on July 28, 2009, the Board of County Commissioners re-established the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

**WHEREAS**, Skamania County is in the process of updating zoning classification for all land within unincorporated Skamania County to be consistent with the adopted Comprehensive Plan or adopted Subarea Plans; and,

**WHEREAS**, there are over 15,000 acres of private land within unincorporated Skamania County that do not have zoning classifications; and,

**WHEREAS**, most of the area within unincorporated Skamania County that is not currently covered by a zoning classification is currently used as commercial forest land or within the Gifford Pinchot National Forest; and,

**WHEREAS**, the Growth Management Act requires all counties in the State of Washington to provide protections for commercial forest land from the encroachment of residential uses; and,

**WHEREAS**, since January 1, 2006, over 230 new parcels (20 acres or larger) have been created through the deed process, which is exempt from the subdivision and short subdivision (short plat)

regulations and other environmental review processes; and,

**WHEREAS**, several comments submitted during the public comment periods related to the draft Comprehensive Plan and the draft Swift Subarea Plan expressed concern on the number of exempt parcels that have been created since the planning process began and that the exempt parcels do not have any level of review related to critical resource protection, design standards, road maintenance, stormwater or other checks and balances required for residential lots created through the subdivision or short subdivision (short plat) process; and,

**WHEREAS**, these new exempt parcels are located in existing forest land areas that during the review process of the Comprehensive Plan and pending zoning classification process, the County Commissioners are determining which areas will be designated as commercial forest land and protected from the encroachment of residential uses as required by the Growth Management Act; and,

**WHEREAS**, allowing new construction on these parcel created through an unregulated exempt process prior to the County Commissioners completing the zoning classification process essentially is circumventing the legislative process and could endanger the public's safety, health and general welfare; and,

**WHEREAS**, the development within many locations of unincorporated Skamania County, outside of the areas with zoning classifications is located on rugged mountainous terrain, is only accessed through United States Forest Service Roads and private roads, and does not currently have access to electrical power service, land-line telephone service and cellular telephone service; and,

**WHEREAS**, continued unplanned and uncontrolled residential growth in the areas of commercial forest lands and the Gifford Pinchot National Forest could potentially increase the risk of forest fires and other emergency events; and,

**WHEREAS**, during the visioning process of the Comprehensive Plan information was gathered to help determine where the best locations are for future residential development, taking into considerations the terrain, access roads, location of critical area resources, location of commercial forest lands, future service needs of residents, and future water usage for residential development; and,

**WHEREAS**, the Board of County Commissioners having provided proper notice in the official newspaper of general circulation and with a quorum present, conducted a public hearing to consider extending the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County for six months; and,

**WHEREAS**, after all those attending the hearing were given the opportunity to speak; the public

hearing was closed to public testimony; and,

**WHEREAS**, the Board of County Commissioners has the authority pursuant to RCW 36.70.795 to adopt a moratorium without holding a public hearing (as long as a public hearing is held on the adopted moratorium within at least 60 days of its adoption) and whether or not there is a recommendation on the matter from the Planning Commission or the Community Development Department, that may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such longer period. A moratorium may be renewed for one or more six-month period(s) if a subsequent public hearing is held and finding of fact are made prior to each renewal; and,

**WHEREAS**, a work plan for the zoning classification process has been developed; and,

**WHEREAS**, the Board of County Commissioners finds a sufficient basis to extend the moratorium, believe that the above mentioned circumstances constitute an emergency, and that it is in the public's best interest (to protect the public's safety, health and general welfare) to maintain the status quo of the area pending the County's consideration of developing zoning classifications for the areas covered by the newly adopted 2007 Comprehensive Plan; and,

**WHEREAS**, the Board of County Commissioners intends for these recitals to constitute its "findings of fact" as required by RCW 36.70.795; and,

**NOW, THEREFORE BE IT HEREBY ORDAINED AND ESTABLISHED BY THIS BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:** the Board of County Commissioners hereby adopts Ordinance 2010-06 to extend for six months the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

**ACKNOWLEDGED IN REGULAR SESSION** this 15th day of June 2010 and set for public hearing on the 7<sup>th</sup> day of July 2010 at 5:30 PM.

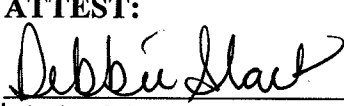
**BOARD OF COUNTY COMMISSIONERS  
SKAMANIA COUNTY, WASHINGTON**

  
Chairman

  
Commissioner

  
Commissioner

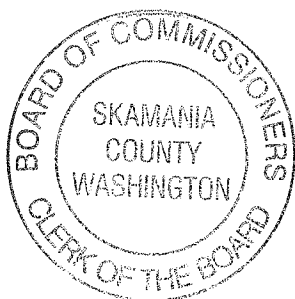
**ATTEST:**

  
Clerk of the Board

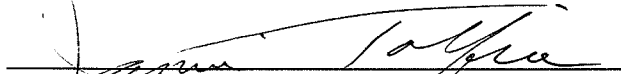
**APPROVED AS TO FORM ONLY:**

  
Skamania County Prosecuting Attorney

**ORDINANCE NO. 2010-06 IS HEREBY PASSED INTO LAW THIS 7th DAY OF JULY 2010.**




**BOARD OF COUNTY COMMISSIONERS  
SKAMANIA COUNTY, WASHINGTON**

  
Chairman

  
Commissioner

  
Commissioner

**ATTEST:**

  
Clerk of the Board

**APPROVED AS TO FORM ONLY:**

\_\_\_\_\_  
Skamania County Prosecuting Attorney

AYE \_\_\_\_\_ 3  
NAY \_\_\_\_\_  
ABSTAIN \_\_\_\_\_  
ABSENT \_\_\_\_\_

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7 BEFORE THE STATE OF WASHINGTON  
8 ENERGY FACILITY SITE EVALUATION COUNCIL

9 In the Matter of  
10 Application No. 2009-01

11 of

12 WHISTLING RIDGE ENERGY PROJECT  
13 LLC

14 for

15 WHISTLING RIDGE ENERGY PROJECT

DECLARATION OF SERVICE FOR  
(SOSA) PETITION FOR  
RECONSIDERATION

16 DECLARATION OF SERVICE

17 Carol Cohoe, over 18 years of age and competent to testify herein, declares as  
18 follows:

19 I am an employee in the law offices of Aramburu & Eustis, LLP. I hereby certify that  
20 on the date below I served, by electronic mail and by placing copies in First-Class U.S.  
21 Mail, PETITION OF SAVE OUR SCENIC AREA FOR RECONSIDERATION OF  
22 "RECOMMENDATION PACKAGE" For The WHISTLING RIDGE ENERGY  
23 PROJECT upon each person designated on the current official service list in this  
24 proceeding (published 10/04/2011, 32 parties listed). Filing with EFSEC was made by  
25 email and by Fed Ex delivery.

26 I declare under the penalty of perjury under the laws of the State of Washington  
27 that the foregoing is true to the best of my knowledge and belief.

28 (SOSA RECONSIDERATION PETITION)  
DECLARATION OF SERVICE - 1

ARAMBURU & EUSTIS LLP  
ATTORNEYS AT LAW  
720 3RD AVE., STE. 2112  
SEATTLE 98104  
(206) 825-9515  
FAX (206) 882-1376

1 Dated in Seattle, Washington this 26<sup>th</sup> day of October, 2011.

2 ARAMBURU & EUSTIS LLP

3 Carol Cohoe

4 Carol Cohoe